SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 186

FLOYD L. LAND,

Petitioner,

vs.

ETHEL ROSENBERG BASS, JOINED BY HER HUSBAND AND NEXT FRIEND, WALTER C. BASS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CLAUDE L. GRAY,
Counsel for Petitioner.

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STATUTES AND RULES

SUPREME COURT OF THE UNITED STATES

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No. 186

FLOYD L. LAND,

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ETHEL ROSENBERG BASS, JOINED BY HER HUSBAND AND NEXT FRIEND, WALTER C. BASS,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

Floyd L. Land, Petitioner, presents this petition for writ of certiorari to review a decision of the Circuit Court of Appeals for the Fifth Circuit, and shows unto this Honorable Court:

A.

Summary Statement of the Matter Involved.

Petitioner herein was Plaintiff in the Trial Court and Respondents were Defendants. Petitioner herein will here-

after be referred to as Plaintiff and the Respondents as Defendants.

On October 12, 1943, Plaintiff filed complaint against Defendants, predicating jurisdiction in the District Court on the existence of a question arising under the Emergency Price Control Act of 1942 and the rules and regulations issued thereunder relating to rent control (R. 1-14).

Plaintiff sought to have the continued possession of "housing accommodations," which he occupied at the time of the freeze date freezing rentals, preserved and protected under the terms of the Act.

Plaintiff also charged that the Respondents were seeking to evict him from the premises in violation of the provisions of the Act and sought an injunction from these eviction proceedings.

Plaintiff also, as collateral to the Federal question involved, charged an oral agreement for lease plus part performance thereof entitled him to decree for specific performance of the oral agreement and prayed for a decree to that effect.

Plaintiff also charged overpayment of the ceiling rentals, together with attorney's fees and costs, under the Emergency Price Control Act, and sought treble damages thereunder.

The following portions of the Complaint set forth the case presented:

> "Under date of July 21, 1939, Plaintiff entered into a written contract with Defendant, duly signed, sealed and delivered and properly acknowledged, granting to Plaintiff a lease upon said property then known as the Hotel Astor, located at 217 South Orange Avenue, Orlando, Florida, together with equipment and furnishing therein contained as specified and listed in an inventory thereto attached, said lease to be for a term of two years from the 12th day of October, 1939, which

said lease further provided that the Plaintiff would have the right and option to release said premises at the termination of said agreement upon the same terms and conditions as therein provided for a term of one year and that Plaintiff should notify Defendant of his intention so to do not less than thirty days before the expiration of the term thereof; that Plaintiff did exercise the said option and did thereafter continue to pay to the Defendant the rental provided for in said lease agreement for the additional term therein provided; thereafter, after October 1, 1942, and prior to October 12, 1942, Plaintiff entered into an oral agreement with Defendant for further lease or extension of said lease to begin with date of October 12, 1942, and Defendant caused to be prepared a lease in writing setting forth the terms of said release arrangement and delivered said lease to Plaintiff to be signed by him, which said contract of lease was dated the 12th day of October, 1942, and which provided, among other things:

> 'Should the Lessee desire to avail himself of the right and privilege of such renewal, he shall notify the Lessor of his intention so to do not less than 30 days before the expiration of the term hereof';

that in drafting said contract of re-lease the same inventory was used by Defendant's attorney which had been used in the original lease and because many of the items therein contained had worn out and were not then in existence and said list needed to be corrected, Plaintiff requested a correction of said list so as to make it speak the truth before signing the said contract of lease; that Defendant has steadfastly refused to execute and deliver to Plaintiff a signed lease as agreed but Plaintiff has continued to remain in possession of said property under said lease arrangement and has paid all rentals due thereunder and has fully complied with the terms and conditions of his said agreement to lease with Defendant up to and including the present time; that Plaintiff relied upon said agreement

with Defendant for a continuation of said lease or contract of re-lease and has remained in possession of said premises up to the present time and expended large sums of money upon repairs to said property, in order to make said property tenantable, a large portion of which the Defendant herself was obligated to make as landlord, and in addition furnishings necessary to the continued use of the premises. That in equity and good conscience Plaintiff is entitled to specific performance of said agreement so made and entered into with Defendant; that a copy of said lease prepared by Defendant and delivered to him is hereto attached and made a part hereof and marked Plaintiff's Exhibit 'F.'

* * * * * * *

"7. That Plaintiff has continually occupied said premises pursuant to and under said agreement to lease and paid all the rentals and complied with all conditions and provisions therein contained up to and including the present time. That under date of September 10, 1943, Plaintiff addressed in writing a written communication to the Defendant, Ethel R. Bass, and notice that he intended to exercise his right to avail himself of the right and privilege of a renewal of said lease in accordance with the provision therein contained; that a copy of said written notice as communicated to said Ethel R. Bass is attached hereto as Plaintiff's Exhibit 'G' and incorporated herein fully and to the same extent as if a part hereof.

"8. Plaintiff would further show that notwithstanding his rights under said agreement to lease and the exercise of his option to re-lease as aforesaid and notwithstanding his right to continue occupancy of said property by virtue of the provisions as contained in said Federal laws and regulations and by virtue of his lease arrangement that the Defendant Ethel R. Bass, did thereafter on or about the 15th day of September cause to be served upon Plaintiff notice to vacate said premises and to relinquish his possession thereof on

October 12, 1943; that said Defendant did not procure from the Orlando Area Rent Office of the Office of Price Administration, as required by law, proper permission to make demand upon Plaintiff to relinquish possession of said property and Plaintiff charges that said attempt to cause Plaintiff to vacate said premises is a violation of the provisions of the Federal laws relating to rent control and the lawful rules and regulations issued thereunder and Plaintiff further charges that Plaintiff is entitled to the continued occupancy of said property both by virtue of the provisions of said laws and regulations and further by virtue of his agreement to lease as aforesaid.

"That in addition to his rights and under the said Federal law relating to rent control and the regulations thereunder, Plaintiff is further entitled under the local and State laws of this State in equity to have said agreement to lease specifically enforced for the full term thereof and a rental thereof in accordance with his notice served upon the Defendant on the date of September 10, 1943, as hereinabove set forth, and is further entitled to have the Defendant execute and sign a proper lease in accordance with the copy thereof so delivered to Plaintiff by Defendant with a corrected inventory thereto attached; that Plaintiff's remedy at law is inadequate and Plaintiff is entitled to have his rights under said Federal laws adjudicated and determined in this forum where in accordance with the provisions of said Federal Act such matters can be properly adjudicated and determined in a Court of Equity; that this Honorable Court by virtue of the Federal questions involved herein not only has jurisdiction to determine all such questions but all other questions and issues involved in this cause.

"9. That Plaintiff in the operation of his business as tenant of said housing accommodations is furnishing living quarters to both transient and permanent guests occupying rooms in said premises as his sub-tenants under his existing lease arrangements, and agreement

and Plaintiff will suffer irreparable injury and loss and his business will be greatly disrupted and interfered with unless the Defendant be restrained and enjoined from further proceedings in the matter of causing Plaintiff to be evicted from said property; that said notice so served upon Plaintiff is the first step in a summary proceeding to be filed in the County Court in and for Orange County where such matters are cognizable in the State Court of Florida; that unless Defendant be restrained and enjoined from further proceedings in attempting to remove Plaintiff from said premises, that Plaintiff's rights in and to the premises under the Federal and local laws as set forth herein will be materially interfered with and his rights to the peaceful and undisturbed enjoyment of said property and the proper conduct of said business will be unnecessarily disrupted and cause irreparable loss and injury to his said business; that said County Court is without equity jurisdiction and without the power to entertain the equitable defenses and enter decrees enforcing Plaintiff's rights to continued possession so that his rights in and to said property under his agreement and under the lease as aforesaid may be preserved and protected pending adjudication herein" (R. 8-13).

Defendants filed Motion to Dismiss, which was incorporated into an Answer. The grounds of this motion were general, charging that the Complaint failed to state a cause of action, and that the Defendants were not under any restriction imposed by the Federal or State laws or regulations against the removal of Plaintiff.

The motion further attacked the constitutionality of the Emergency Price Control Act. However, this portion of the motion was not considered.

The case came on to be heard before the Trial Court on this Motion to Dismiss and upon application for temporary restraining order and injunction, and the Trial Court

granted the Motion to Dismiss and entered the following order:

> "This cause having come on to be heard on the 3rd day of November, 1943, on the sworn Complaint of the Plaintiff, and motion for Temporary Restraining Order with affidavit in support thereof, and upon the sworn Answer of the Defendants and Motion to Dismiss the complaint, and the Court having heard argument thereon by counsel for the respective parties, and being advised in the premises,
>
> "It is hereupon Ordered and adjudged that the Motion for Temporary Restraining Order be and the same is hereby denied, and that the Complaint of the Plaintiff be and the same is hereby dismissed without prejudice to the claim of the Plaintiff for triple damages against the Defendants and his right to hereafter prosecute such claim" (R. 71-72).

Appeal was duly taken to the Circuit Court of Appeals for the Fifth Circuit and assigned as error the Trial Court's order dismissing the cause; the refusal to grant temporary restraining order and injunction; the failure to hold Plaintiff was entitled to remain in possession of the premises as tenant occupying housing accommodations, within the meaning of the Emergency Price Control Act; the failure of the Court to hold that under the State law Plaintiff was entitled, in equity, to specific performance of his agreement to lease; the error of the Court in holding that the property involved had been released from rent regulations by virtue of Supplemental Amendment No. 15 issued by the Office of Price Administration; the failure of the Trial Court to hold that Plaintiff was entitled to the continued possession of the property involved as the holder of an underlying lease; and the failure of the Court to hold that the relationship of tenant and landlord, existing between Plaintiff and Defendants as of November 1, 1941, had been frozen under the

Emergency Price Control Act and the regulations issued thereunder.

The appeal came on to be heard before the Circuit Court of Appeals, resulting in order of affirmance in part and a reversal in part. The Appellate Court reversed the Trial Court as to treble damages, holding that the Plaintiff was entitled to have this issue determined upon the merits. However, it affirmed the action of the Trial Court in dismissing the other claims without a hearing upon the merits (R. 86-90).

Petition for rehearing was filed by Plaintiff (R. 91-95).

Order denying this petition was entered May 25, 1944 (R. 96).

Order staying issuance of mandate was entered May 31, 1944 (R. 97).

The opinion of the Circuit Court of Appeals appears at R. 86-90.

B.

Reasons Relied Upon for Allowance of Writ.

1. The Circuit Court of Appeals has decided an important question of public law in conflict with and contrary to a decision of the Circuit Court of Appeals for the District of Columbia, arising under the Emergency Price Control Act, to-wit: The case of *Myers* v. *H. L. Rust Co.* (U. S. C. A. D. C.), 134 F. 2d 417.

2. The Circuit Court of Appeals has in effect decided a Federal question contrary to a decision of the Supreme Court of the United States.

3. The Circuit Court of Appeals has decided an important question of procedure in conflict with and contrary to its own previous decision, to-wit: The case of *Henderson, Administrator, Office of Price Administration* v. *Fleckinger, et al.* (C. C. A. 5), 136 F. 2d 381.

4. The Circuit Court of Appeals has decided an important question of Federal law in conflict with and contrary to decisions of other Circuit Courts of Appeal, to-wit: The cases of *Brown, Administrator, Office of Price Administration*, v. *Wright* (C. C. A. 4), 137 F. 2d 484; and *Brown* v. *Quinlan* (C. C. A. 7), 138 F. 2d 228.

5. The Circuit Court of Appeals has decided an important question of local law in conflict with and contrary to the decisions of the Supreme Court of Florida on a question arising under Florida law, to-wit: The cases of *Stone* v. *Barnes-Jackson Co., Inc.* (Fla.), 176 So. 767; *General Motors Acceptance Corporation* v. *Lynch Building Corporation*, 118 Fla. 2, 159 So. 785; and *Hotel Halcyon Corporation* v. *Miami Real Estate Co.*, 89 Fla. 156, 103 So. 403.

C.

Precise Questions Involved.

1. Was the Trial Court in error in holding that the property involved herein was released from maximum rent regulation by virtue of Supplemental Amendment No. 15 issued by the Office of Price Administration?

2. Should the Trial Court dismiss a Complaint on a Motion to Dismiss without hearing the case upon its merits in a case where the allegations show Plaintiff to be entitled to the continued possession of "housing accommodations," under the terms and provisions of the Emergency Price Control Act?

3. Where Plaintiff seeks injunction against eviction proceedings in a State Court and charges Defendant with acts which violate the provisions of the Emergency Price Control Act relating to eviction of tenants, should the Trial Court dismiss the Complaint on Defendant's Motion to Dis-

miss without a hearing upon the merits in a case where, under the local State law, Plaintiff was entitled to have an oral agreement enforced by decree of specific performance?

4. Under the Emergency Price Control Act, was the purpose of the Act to freeze the landlord-tenant relationship existing as of the freeze date so that the legal obligation of the tenant to quit is suspended as well as the rights and powers of the landlord so long as the tenant continued to pay his rent and is otherwise not in default?

D.

Prayer for Writ.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, commanding that Court to certify and send to this Court on the day to be designated, full and complete transcript of the record and all proceedings in the case entitled *Floyd L. Land, Appellant* v. *Ethel Rosenberg Bass,* joined by her husband and next friend, Walter C. Bass, being case No. 10893, to the end that this cause may be reviewed and determined by this Court; that the decree of the Circuit Court of Appeals be reversed insofar as it is adverse to petitioner; and that petitioner be granted such other and further relief as may seem proper.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 186

FLOYD L. LAND,

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vs.

ETHEL ROSENBERG BASS, JOINED BY HER HUSBAND AND NEXT FRIEND, WALTER C. BASS,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

Opinion of the Circuit Court of Appeals does not appear in any of the official or advance sheets of the reporter systems but copy thereof appears at pages 86-90 of the Record.

II.

Jurisdiction.

1. Jurisdiction is invoked under Judicial Code, Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. A., Section 347.

2. The date of the judgment to be reviewed is May 2, 1944. Rehearing denied May 31, 1944.

3. The nature of the case, and the fact that the rulings below were such as to bring this case within the jurisdictional provisions relied on, are fully disclosed in the petition for writ of certiorari under Subdivisons "A" and "B".

4. The following are the cases relied on to sustain the jurisdiction:

Bowles v. *Willingham*, 88 L. Ed. Advance Sheet No. 11, 626;

Hecht Co. v. *Bowles*, 64 S. Ct. 587; 88 L. Ed. Advance Sheet No. 9, 465;

Lockerty v. *Phillips*, 319 U. S. 182; 87 L. Ed. 1339; 63 S. Ct. 1019;

Tyson v. *United States*, 297 U. S. 121; 56 S. Ct. 390; 80 L. Ed. 520.

III.

Statement of Case.

The statement of case is fully set forth in the petition for writ of certiorari and for the sake of brevity will be omitted here.

IV.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In affirming the District Court wherein it held that the property involved herein had been released from maximum rent regulation by virtue of Supplemental Amendment No. 15 issued by the Office of Price Administration.

2. In sustaining the action of the Trial Court dismissing the Complaint on Motion to Dismiss without hearing

the case upon its merits where the plaintiff alleged facts which showed that plaintiff was entitled to the continued possession of "housing accommodations" under the terms and provisions of the Emergency Price Control Act.

3. In sustaining the action of the Trial Court in denying injunctive relief to plaintiff against eviction proceedings in the State Court where, under the local State law, plaintiff had alleged a case which entitled him to specific performance of an oral agreement to lease the property involved for a further period of time after the expiration of the existing lease.

4. In holding that the purpose of the Emergency Price Control Act was not to freeze the landlord-tenant relationship existing as of the freeze date so that the legal obligation of the tenant to quit was suspended, as well as the rights and powers of the landlord, so long as the tenant continued to pay his rent and was not otherwise in default.

5. In holding that the rental act for the District of Columbia was a special and different rent control act than that which was operative in the area involved in this case.

6. In failing and refusing to hold that the Office of Price Administration had not determined that plaintiff was entitled to an underlying lease from the defendant so as to prevent his being excluded from the property, and in denying the plaintiff the right to prove this fact.

7. In failing and refusing to follow the decisions of the Supreme Court of Florida with respect to plaintiff's right to specific performance of an oral agreement to lease.

8. In failing to properly interpret and construe the effect of Supplemental Amendment No. 15 issued by the Office of Price Administration as applied to the case presented by plaintiff in his Complaint and in holding that

plaintiff had not pleaded a case which was an exception under said Supplemental Amendment.

V.

ARGUMENT.

Summary of Argument.

A. The District Court held that the property involved herein was released from maximum rent regulation by virtue of Supplemental Amendment No. 15 issued by the Office of Price Administration. The Area Rent Director admitted that he had not determined whether or not there was an underlying lease. Plaintiff charged an underlying lease and further facts which brought the property within the exceptions provided for in said Amendment. The Circuit Court of Appeals affirmed the action of the District Court. It is submitted that both Courts were in error.

B. The District Court dismissed the Complaint on Motion to Dismiss without a hearing upon the merits of the case. The allegation made by plaintiff, if true, should have entitled him to the privilege of offering proof so as to preserve his right to continued possession of the "housing accommodations." Under the provisions of the Emergency Price Control Act, properly interpreted, he had pleaded a case entitling him to this relief against the eviction proceedings. Both the District Court and the Circuit Court of Appeals erred in depriving plaintiff of this right.

C. Plaintiff sought an injunction against eviction proceedings in the State Court and charged the defendants with acts which violate the provisions of the Emergency Price Control Act relating to eviction of tenants. The Trial Court dismissed the Complaint on Motion of Defendant although under local State law plaintiff had alleged an oral

agreement with such part performance thereof as would have entitled him to specific performance of the agreement under the decisions of the Florida Supreme Court. Both the Circuit Court of Appeals and the District Court erred in holding that plaintiff should be deprived of his opportunity of proving the allegations of his Complaint.

D. The purpose of the Emergency Price Control Act was to freeze the landlord-tenant relationship existing as of the freeze date, and under the facts pleaded plaintiff was a tenant at the time this Area was brought under the terms of the Act. Under the facts pleaded there was no default either in the payment of rent or otherwise, which would have entitled the landlord to have disturbed this relationship. Both the District Court and the Circuit Court of Appeals failed to follow the decision of the Circuit Court of Appeals for the District of Columbia which held, in a similar case, that the purpose of the Act was as stated above. The holding in the instant case conflicts with the cited case and it is submitted that the cited case is correct and the holding of the Fifth Circuit Court of Appeals is in error.

A.

QUESTION No. 1.

Was the Trial Court in error in holding that the property involved herein was released from maximum rent regulation by virtue of supplemental Amendment No. 15 issued by the Office of Price Administration?

Supplemental Amendment No. 15 (shown on pages 7 and 8 of the Record) is so worded that it only operates to exclude "entire structures or premises" with more than twenty-five rooms and further provides for an exception where there is an underlying lease entered into after Oc-

tober 1, 1941, and prior to the effective date of the regulation, which such lease remains in force with no power of the tenant to cancel or otherwise terminate the lease.

Plaintiff alleged that the property did not consist of the entire structure but was only a part thereof and that he held such an underlying lease.

We submit that it was an error to have granted a Motion to Dismiss the Complaint when the motion admitted the truth of the allegations for the purpose of this determination.

B.

QUESTION NO. 2.

Should the Trial Court dismiss a complaint on a motion to dismiss without hearing the case upon its merits in a case where the allegations show plaintiff to be entitled to the continued possession of "Housing accommodations," under the terms and provisions of the Emergency Price Control Act?

The case should have been heard upon its merits. This question was presented to the Circuit Court of Appeals of the Fifth Circuit in the case of *Henderson, Administrator, Office of Price Administration* v. *Fleckinger, et al.* (C. C. A. 5) 136 F. 2d 381. The Trial Court had dismissed the Complaint on motion. The Circuit Court of Appeals reversed the Trial Court, holding that if a violation of the law is charged, the case should be tried on its merits.

The Henderson case, *supra,* was cited and followed in the case of *Brown, Administrator, Office of Price Administration* v. *Wright* (C. C. A. 4), 137 F. 2d 484.

To the same effect, *Brown* v. *Quinlan* (C. C. A. 7) 138 F. 2d 228.

C.

QUESTION NO. 3.

Where plaintiff seeks injunction against eviction proceedings in a State Court and charges defendant with acts which violate the provisions of the Emergency Price Control Act relating to eviction of tenants, should the Trial Court dismiss the complaint on defendant's motion to dismiss without a hearing upon the merits in a case where, under the local State law, plaintiff was entitled to have an oral agreement enforced by decree of specific performance?

If, under the State law, plaintiff was entitled to specific performance of his oral agreement to extend the lease, it was error for the Court to have dismissed his Complaint.

That a parol contract for lease may be enforced by a court of equity has been decided by the Supreme Court of Florida in the following cases:

General Motors Acceptance Corporation v. *Lynch Building Corporation*, 118 Fla. 2, 159, So. 785;

Hotel Halcyon Corporation v. *Miami Real Estate Co.*, 89 Fla. 156, 103 So. 403;

Stone v. *Barnes-Jackson Co., Inc.* (Fla.), 176 So. 767.

In the last cited case the Trial Court was reversed because of dismissing the bill on Motion to Dismiss. Plaintiff not only alleged the oral agreement but the expenditure of moneys in reliance upon the agreement, which was sufficient part performance to take the case out of the Statute of Frauds.

D.

QUESTION NO. 4.

Under the Emergency Price Control Act, was the purpose of the Act to freeze the landlord-tenant relationship existing as of the freeze date so that the legal obligation of the tenant to quit is suspended as well as the rights and powers of the landlord so long as the tenant continued to pay his rent and is otherwise not in default?

The case of *Myers* v. *H. L. Rust Co.* (U. S. C. A. D. C.), 134 F. 2d 417, expressly holds that the purpose of the Emergency Rent Act was to freeze the landlord-tenant relationship and as is pointed out in the case of *Bowles* v. *Willingham,* 88 L. Ed. Advance Sheet No. 11, page 626, on pages 640 and 642 of the Reporter:

> "The statute of its own force is not applicable in any area except the District of Columbia unless and until so made by a regulation of the Administrator." (p. 640.)

Again on page 642:

> "Save for the District of Columbia, the designation of an area where the Act is to operate depends wholly upon the Administrator's judgment that so-called defense activities have resulted or threatened to result in an increase of rents inconsistent with the purposes of the Act."

It would therefore appear that the only distinction between the instant case and the *Myers* case, *supra,* is that the Office of Price Administration issued Regulation No. 55, which brought the Orlando Area, where the property in question is located, within the Defense-Rental Area.

It is, therefore, submitted that the Circuit Court of Appeals was in error in undertaking to distinguish the holding in the *Myers* case, *supra*, with that of the case at Bar.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise of this Court's supervisory powers in order that the proper construction of the Emergency Price Control Act and regulations issued thereunder may be had, settled, and determined; that the conflicts and contrariety of opinion herein disclosed may be settled amicably and that the practice and procedure relating to Federal Courts may be more clearly defined; and that a matter of so vital a concern to the public may be clarified so as to enable a better administration of the Federal Act involved. Plaintiff respectfully submits that writ of certiorari should be granted and that this Honorable Court should review the decision of the Circuit Court of Appeals and finally reverse it.

Dated at Orlando, Florida, this 14th day of June, A. D. 1944.

Respectfully submitted,

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